but positive acts of encouragement will effect an estoppel even though made in ignorance of the true state of facts. This is apparently the English [8] and the prevailing American doctrine.[9]

M. B. K.

Evidence — Cross-Examination of Character Witness.— The case of the People v. Silva [1] holds that in the cross-examination of a witness who has testified to the good reputation of the defendant, it is proper to show acts of the defendant inconsistent with the character attributed to him by the witness. People v. Mayes [2] is the only case in California sanctioning this form of question. In all the other cases [3] the question is always as to the report, e. g., "Have you not heard that the defendant was arrested for disturbing the peace?" The latter form of question is preferable, for the cross-examination is simply for the purpose of testing the witness' knowledge of the reputation to which he has testified, and should not be permitted to be used as a means of attacking the defendant's character by evidence of specific wrongful acts.[4]

A. M. K.

Evidence — Presumptions.— We are not accustomed to look upon the German courts as entangled in the meshes of precedent. Decided cases are seldom referred to and then only for the reasoning. No artificial weight is given to the reasoning because contained in a judicial opinion. The principle governs, not the case. Yet this freedom appears to be too restricted to satisfy a certain group in Germany. The contention of this group is that principles lack "play in the joints"; that their application to particular cases results in unnecessary injustice. Their demand is for a free law movement where the gaps in the law will not be filled by stretching the nearest principle but by putting the judge in the position of a legislator to do what is right in the particular case under all the circumstances.[1]

---

[8] Freeman v. Cook (1848), 2 Ex. Rep. 654; Slim v. Coucher (1860), 1 De Gex, F. & J. 518; Burrowes v. Lock (1805), 10 Ves. 470; Hobbs v. Norton (1682), 1 Vern. 137, 2 Ch. Ca. 128; Hunsden v. Cheyney (1891), 2 Vern. 150.

[9] Accord: Beardsley v. Foote (1863), 14 Ohio St. 414; Raley v. Williams (1880), 73 Mo. 310; Longworth v. Ashlin (1891), 106 Mo. 155, 17 S. W. 294; New York cases, supra 1 & 2; Pa. cases, supra 7; Kuhl v. The Mayor and Chancellor of Jersey City (1872), 23 N. J. Eq. 84.

Contra: Gjerstaden et al v. Hartzell (1900), 9 N. D. 268, 83 N. W. 230 Dorlarque et al. v. Cress et al. (1874), 71 Ill. 380; Henshaw et al. v. Bissel (1873), 85 U. S. 255, 21 L. Ed. 835.

[1] (Oct. 15, 1912), 15 Cal. App. Dec. 454.

[2] (1896) 113 Cal. 618, 45 Pac. 860.

[3] People v. Ah Lee Doon (1893), 97 Cal. 171, 31 Pac. 933; People v. Moran (1904), 144 Cal. 62, 77 Pac. 777; People v. Perry (1904), 144 Cal. 748, 78 Pac. 284; People v. Weber (1906), 149 Cal. 325, 86 Pac. 71.

[4] Jones on Evidence, Sec. 864; Wigmore on Evidence, Sec. 988.

[1] 74 Central Law Journal, 267.

It must amaze the German lawyer to observe the way in which American judges have fettered themselves by precedent in trial practice, a region where judicial discretion should generally reign supreme. Nowhere is this judicial tendency more marked than in the treatment of presumptions. Presumptions range from rules of substantive law like those governing the passing of title in sales down to such maxims as the one that private transactions have been fair and regular.[2] Yet courts have erected a mass of precedents based on these general maxims so that before a question of fact can be determined the authorities must be ransacked to ascertain whether some court has not raised a presumption on the subject, although the application of the presumption to the facts of the particular case will frequently produce an arbitrary result. The Supreme Court has recently expressed its disapproval of this practice.[3] The treasurer of a county gave a bond of the United States Fidelity and Guarantee Company on his election for the term from January 5, 1903, to January 7, 1907. On re-election the defendant went on the bond for the second term. February 7, 1907, the treasurer committed suicide and was found to be a defaulter to the amount of over $18,000. The trial court applied a presumption that all the money had been embezzled during the second term, citing several cases in support of the ruling. The Supreme Court, however, held that "the presumption that an officer has performed his official duty is, at best, 'weak and inconclusive' (Williams v. Harrison, supra), and whatever force it possesses would seem to vanish upon proof that the particular duty in question (i. e., that of safekeeping and accounting for the public funds), had in fact been violated." Such decisions show the power of the court to relieve the law from a growth of technicalities without doing violence to any substantive principles. As Sir Frederick Pollock has said: "But we have allowed our art and mystery to become a mystery, in the sense of the like-sounding and now more familiar word, to the lay people; and in this and other ways we have to pay for it. The best of all would be, once more, that the courts should never be wanting in the knowledge of their own inherent powers and in courage to use them. But this achievement is of a felicity not reducible to classification or rule."[4]

A. M. K.

Fixtures — Landlord and Tenant — Right to Remove Plate Glass Front.— The tyranny which the past exercises over the present can hardly find better illustration than in the field of property law . An irrational distinction between real and personal property, based on the

---

[2] C. C. P. Cal., Sec. 1963, Subdiv. 19.

[3] People v. Metropolitan Surety Co. (Nov. 16, 1912), 44 Cal. Dec. 573.

[4] 12 Columbia Law Review, 588.